



22 December 2011

Department of Planning and Land Use
Project Processing Counter
County of San Diego
Attention: Matthew Schneider
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San Diego, California 92123

Via Email: matthew.schneider@sdcounty.ca.gov

RE: WIND ENERGY ZONING ORDINANCE AND GENERAL PLAN
AMENDMENT 3803 10-007 (POD), LOG NO. 3910 09-00-003 (ER)

The San Diego Audubon Society is a non-profit organization dedicated to the protection and appreciation of birds, other wildlife and their habitats. As an environmental organization, we admire the County's attempt to foster the development of renewable energy in our region and are fond of the Decommissioning Plan and Secured Agreement Requirements.

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However, we feel that the current project is short-sighted in its attempts to eliminate environmental review requirements for "small" wind turbines and alter zoning ordinances related to "large" turbines, without taking into consideration the myriad of known and unknown potentially significant negative effects of these unidentified and ambiguous future projects. Especially since there have been no valid explanations of emergent circumstances that warrant an oversight of environmental reviews, we favor wind and other energy generation projects that are done at a reasonably careful and deliberate pace, taking into consideration the needs of not only the anthropogenic societies within the county, but also the needs of the ecosystems which support them.

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MIGRATORY BIRD TREATY ACT

The Environmental Impact Report does not mention about impacts to the 1,007 species of migratory birds protected by the Migratory Bird Treaty Act (MBTA), nor does it address the impacts to eagles, that are protected by the Bald & Golden Eagle Protection Act (BGEPA). Both "small" and "large" turbines placed in an inappropriate location can result in take of birds. The U.S. Fish and Wildlife Service does not issue incidental or accidental take permits under the MBTA, and while programmatic take permits are being developed under the BGEPA, potential permittees would have to pursue all steps necessary to show that "take is unavoidable," requiring pre-construction monitoring that is currently recommended to last for two years. The latter brings up an interesting question: if the FWS is recommending two years of monitoring before determining that a project is unable to avoid takings, how can one reasonably alter county ordinances to

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expedite processes which are considered too impactful by other governmental entities to breeze by?

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SMALL WIND TURBINES

While we support the spirit of the small wind turbine amendments, which attempt to promote the localized production of energy, we still feel that each project should undergo an appropriately individualized environmental review to ensure that the wildlife in unincorporated areas of San Diego County are fully identified, minimized, and mitigated for..

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Definition of “Small” is arbitrary and “small turbines” are capable of harm.

The so-called “small” size of structures does not mean it is incapable of significant harm. Studies at Altamont Pass labeled some small turbines as “killers,” and bird strikes are frequently reported at first or second-story levels. Thus, a structure with a height under 80 feet is not excluded from incidental take. In addition to height not being a magic formula to bird safety, former ordinances had all turbines limited to 80 feet in height. How then can one justify shifting our baseline and labeling what once was deemed the maximum limit for turbines in the area as the now “small” version of wind energy that is able to be constructed without environmental review?

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Ordinance re: “Small” Wind Turbines undermines spirit of environmental review.

To provide a blanket pass for all projects which match or fall below arbitrary guidelines for “small” turbines undermines the concept of environmental review. All projects that have the potential to significantly impact the environment must be reviewed on a case-by-case basis, as the circumstances and location of each individual project could largely affect its ability to impact the environment. At a very minimum, if a specific class of projects were to be allowed without individual case-by-case review, the standards that trigger when a separate Major Use Permit or other environmental review is required should be based on the best available science. Currently, the project shows no evidence of solid scientific studies warranting such a lax permitting process for “small” turbines.

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LARGE WIND TURBINES

Lack of scientific basis for changing wind turbine specifications.

There should be solid justification, based on sound science, expressing an actual need within the communities, to change the wind turbine specifications. The proposed amendments reducing setback ratios by notable multitudes. For example, the setback from open space, conservation easements and private road easements was reduced from four times the turbine height to 1.1 times height. The setbacks from residences and other civic use buildings dropped from eight times the project height to 1.1 times the turbine height, and vacant lots setbacks that were initially nine times the turbine height were completely eliminated. The reduction in setbacks exceeds the 50% limit written into the ordinance, and this limit was also eliminated, as well as the provision that setbacks with experimental turbines must be higher. Such a drastic change in protections require solid scientific evidence that the proposed setbacks are safe for wildlife, residents and the unincorporated county community.

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BIOLOGICAL CONCERNS

Candidate, Sensitive or Special-Status Species are not protected from Small Turbines

The EIR shows that Small Turbines have potentially significant direct and cumulative impacts to candidate, sensitive, special-status, species and species covered by the MBTA due to removal of sensitive habitat and bird or bat strikes on guy wires, structures, power lines, and turbine blades. This represents a serious concern that must be fully resolved. The Mitigation Measures listed claims that the environmental review process for future Major Use Permits will apply County Guidelines for Determining Significance for Biological Resources. The major flaw with this reasoning is that this project purports to eliminate the requirement of a "Major Use Permit" for Small Turbines, thus, there still remains a significant issue which must be resolved prior to implementation of any projects or issuance of any wind turbine permits.

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Cont.

Amendments for large turbines results in a chain reaction of habitat destruction.

The alleviation of height and setback requirements for Large Wind Turbines has the potential to result in significant direct and cumulative impacts to sensitive and special-status species. A mitigation measure to reduce impacts to avian species is to reduce foraging resources near turbines to reduce the risk of collision; however, this measure fixes one problem with the creation of another: loss of even more habitat for sensitive and special-status species, and it will not resolve the impacts to birds moving from one habitat area to another.

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RECOMMENDATIONS

The proposed amendments to the County Wind Ordinance should be rejected until the following recommendations have been implemented.

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Additional scientific research is still needed to determine impacts of wind turbines before the County should be permit them at all, let alone change specifications and eliminate aspects of environmental review. We agree with our colleagues at the Sierra Club in recommending there be a study of the effects of large wind turbine generated noise, electrical and light pollution emission to establish safe related dose response for exposed people, wildlife and stock and use these real-world response findings to determine what constitutes a safe setback.

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Pre-project monitoring should be used to determine any particular project's potential impact to wildlife. We recommend that the county include a pre-construction monitoring requirement into the permitting process that identify potential impacts to birds and other wildlife. In most cases this monitoring should include the operation of bird detection radar for continuous monitoring. Occasional visits by monitors are not adequate to identify bird use.

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A provision to cease operation if impacts to sensitive wildlife occur should be included in the ordinance. If significant impacts occur from an installation, in spite of assertions that there will be no significant impacts, its operation should be curtailed during the season, weather conditions, migratory patterns, time of day, etc. in which the impacts tend to occur. In some cases this could require that operation would cease completely. Such a provision would, in itself, encourage potential installers to locate wind turbines only in appropriate locations or to use a photo voltaic collector system instead.

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Accurate reports on bird strikes and other impacts to wildlife from wind farms in the neighboring areas should be transparent and made public in order to inform planners, researchers and stakeholders who have an interest in reducing these types of take. By keeping thorough records, County authorities will also improve their planning decisions by having actual data on which to form a scientific basis.

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We appreciate the opportunity to comment and thank you for your attention to our concerns.

Sincerely,
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Conservation Program Manager

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Response to Comment Letter J

San Diego Audubon Society

Roxy Carter

December 22, 2011

- J-1** The County appreciates this comment and the support for renewable energy efforts.
- J-2** These introductory comments regarding wind turbine impacts are more fully developed later in this comment letter and, therefore, more detailed responses are presented later for each topic.
- J-3** In DEIR Section 2.4.2, the County cited the Migratory Bird Treaty Act, including the list of migratory birds and implementing regulations, as well as the Bald and Golden Eagle Protection Act. Potential impacts to eagles are discussed in Section 2.4.3.1 of the DEIR.
- J-4** The County concurs with this comment.
- J-5** The pre-construction monitoring guidelines referred to in this comment are based on large wind farms. Under the proposed Wind Energy Ordinance, large wind turbine projects will have to undergo extensive pre-approval monitoring to evaluate potential impacts to special status species. The County is proposing to apply the latest bird and bat guidelines to all large wind turbine projects.

At present, there are no guidelines or studies available that focus on small residential-scale turbines. While the County acknowledges that there's a potentially significant impact to special status species from small wind turbines, there's no substantial evidence that small turbines will directly result in take under the Migratory Bird Treaty Act (MBTA). The US Fish and Wildlife Service has not indicated that small residential wind turbines are generally prohibited under the MBTA. Currently, landowners are allowed to have a single small wind turbine with a ministerial building permit. If the County imposed a rule requiring two years of pre-construction monitoring for a small residential turbine, development of small turbines would not be feasible for most landowners in the unincorporated County. This stringent and costly requirement would discourage on-site wind energy usage. The County believes that the issues presented in this comment need to be resolved at the federal and State level with particular consideration for nation-wide renewable energy goals.

- J-6** The County does not agree with this comment. The County's project objectives for the Wind Energy Ordinance are to allow development of small wind turbines without a discretionary permit (objective 6) and to streamline and clarify the approval process

- for the development and operation of small wind turbines (objective 4). Individualized environmental review for each small turbine would conflict with these objectives. What the commenter is requesting is essentially the "No Project Alternative" or an alternative that is much different than what the County is proposing. Under the No Project Alternative, a single small wind turbine is already allowed ministerially on a legal lot. Additional small wind turbines require discretionary review but do not have specific environmental requirements. The commenter's recommendation for changes to the project will be included in the documents presented to decision makers for their consideration.
- J-7** The County agrees that small wind turbines can result in significant environmental impacts. This issue is not inconsistent with the existing content of the DEIR. The County does not claim that structures limited to 80 feet are excluded from adverse impacts or incidental take. It can also be said that any construction of any kind can result in biological impacts and incidental take. The County seeks to allow for reasonable development while minimizing adverse environmental impacts to the extent feasible. Based on public comment and coordination with the wildlife agencies, the County has included design standards in draft Section 6951 of the ordinance (see responses to comments I6 and L2). In addition, a reduced alternative for small wind turbines was analyzed in Chapter 4 of the DEIR.
- J-8** The reason for the shift in definition for small and large turbines is based State definitions and on current technology for wind turbines since the original Zoning Ordinance provisions were written in 1985 and 1986.
- J-9** The County does not agree with this comment. One of the primary project objectives is to allow the development of small wind turbines without a discretionary permit. The function of the DEIR for the Wind Energy Ordinance is to, among other things, provide the environmental review for allowing small wind turbines ministerially.
- J-10** The County does not agree with this comment. In February of 2009, the County Board of Supervisors directed staff to analyze a two-tiered system that would allow for ministerial permitting of small turbines and require a Major Use Permit for large turbines. A case-by-case review of turbine proposals to determine permit type, as suggested by the commenter, would be a substantially different approach that does not meet project objectives. Nonetheless, the commenter can propose such an alternative to decision makers during the hearing process. In addition, this comment will be included in the Final EIR for consideration by the County Board of Supervisors.
- J-11** The County does not agree with this comment. Changes to the Zoning Ordinance can be made based on policy decisions rather than based on scientific investigation.

J-12 The County agrees that the multiplier used to determine setbacks from large turbines will be substantially reduced under this project. This is because turbine height is the second factor used to determine the setback and current large turbines are taller, by as much as hundreds of feet, than those used when the original regulations were established.

J-13 While the multiplier used to determine the setbacks from large turbines will be reduced compared to current zoning regulations under this project, there is no substantial evidence provided to indicate that the revised regulations and setbacks will be unsafe. Each Major Use Permit application will be thoroughly evaluated during the discretionary review process to ensure that any safety hazards are minimized. Projects must comply with all of the policies in the Safety Element of the General Plan.

It should also be noted that future large wind turbine projects will have to provide additional setback distances in order to address low frequency noise provisions. Therefore, it is unlikely that any large turbine would be located only 1.1 times the tower height from a neighboring property line.

J-14 The County generally agrees with this comment except that impacts from guy wires and power lines would not occur under the ministerial permitting of small turbines since guy wires are prohibited and power lines must be undergrounded (see Section 6951 of the draft ordinance). Mitigation measures M-BIO-1 and M-BIO-2 would apply only to large wind turbine projects, which require discretionary permits and need site-specific evaluation. To reduce or mitigate impacts from small wind turbines, the County has had to include design standards in the proposed ordinance that can be verified under a ministerial process. Please see responses to comments I6 through I8 for a more detailed discussion of the design standards and the significant biological impacts associated with small wind turbines. Though the design standards in the ordinance may reduce impacts, the County has concluded that potential impacts to special status species will be significant and unavoidable.

J-15 The County concurs with this comment. DEIR Section 2.4.3.1 analyzes potentially significant impacts that are expected to occur due to the revised regulations proposed for large wind turbines.

J-16 The removal of foraging habitat around wind turbines is recommended by the wildlife agencies and is suggested within the California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development. While this measure directly impacts habitat, high-value habitat mitigation will be required as a condition of approval for large wind turbine projects. The County's standard mitigation ratios are provided in

Table 5 of the County's Guidelines for Determining Significance for Biological Resources.

J-17 The County acknowledges the Audubon Society's opposition to the project pending more research. Ultimately, the County Board of Supervisors will determine which project or alternative will be implemented. The information in this comment will be in the Final EIR for review and consideration by the Board.

J-18 Studies are being conducted on large wind turbine projects around the world. To date, there are no universally accepted setback requirements for wind farm projects. However, all of the latest information and appropriate study requirements will be applied during the Major Use Permit process for large turbine projects.

J-19 The County generally agrees with this recommendation for large wind turbines and will be incorporating the latest site-selection criteria and pre-project monitoring requirements from wildlife agencies into its guidelines and report content requirements for biological resources.

For small wind turbines, pre-project monitoring would not be feasible. Two of the County's project objectives are to allow development of small wind turbines without a discretionary permit (objective 6) and to streamline and clarify the approval process for the development and operation of small wind turbines (objective 4). Site-specific evaluations and impact analyses would conflict with these objectives. See also responses to comments I6, I7, I8, J14, DD15, and DD18.

J-20 This comment does not specify whether it is referring to small or large turbines, or both. Therefore, the County wishes to address the comment for both small and large turbine provisions.

The County does not agree that operations for small turbines should be halted in the event of a significant impact to sensitive wildlife. Such a measure would need to either require extensive government monitoring of private lands or rely on individual landowners to report impacts. In the first case, the County does not have authority to access and monitor privately owned lands for monitoring based on issuance of a ministerial permit. And in the second situation, it would not benefit a landowner to report impacts since the result would be to require cessation of operations. Therefore, this approach would not be reliable.

The County agrees that some type of operational shut-down can be imposed on large turbine projects in the event of a significant impact to sensitive wildlife. This type of project-specific mitigation will be evaluated and considered for future Major Use

Draft Responses to Comments

Permits during the discretionary environmental review with particular weight given to wildlife agency recommendations. See also responses to comments L119 and L120.

- J-21** The County agrees with this comment. Depending on the discretionary review of any given wind farm project, post-construction monitoring and reporting is typically required as a project-specific mitigation measure. In addition, the County agrees that such reports should be made available to the public. Unless there is a State or federal mandate to keep bird strike reports confidential, the County shall continue to treat such documents as public information.

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